United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

77-7213

To be argued by
JACK H. DORFMAN

In The

United States Court of Appeals

For The Second Circuit

JOHN ESPOSITO,

Plaintiff-Appellee,

-against-

UNITED STATES NAVIGATION INC.,

-and-

SCINDIA STEAM NAVIGATION CO., LTD.,

Defendants-Appellants.

On Appeal from the United States District Court for the Eastern District of New York.

UNITED STATES COURT OF APPEALS
FILED
AUG 26 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

BRIEF FOR PLAINTIFF-APPELLEE

FODERA, DORFMAN & FERRARI
Attorneys for Appellee
26 Court Street
Brooklyn, New York 11242
(212) 875-9772

JACK H. DORFMAN
Of Counsel

071
LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing
South River, N.J. (201) 257-6850 New York, N.Y. (212) 840-9494 Philadelphia, Pa. (215) 563-5587 Washington, D.C. (202) 783-7288

Table of Contents

	Page
Preliminary statement.....	1
Statement of facts.....	2
Argument.....	6
Appellants' points criticized.....	7-8
Points:	
I. Charters of barges in the New York harbor although accompanied by an attendant paid by the owner are demises and the charterer becomes an owner pro hac vice.	4-12
II. The demise charterer is personally liable for the unseaworthiness of the barge.	12-17
III. The owner (Scindia) of a cargo vessel (M/V "JALADHANYA") is liable though the injury to a longshoreman is suffered elesewhere than aboard the ship.	17-19
Conclusion.....	20

Table of Authorities

Cases cited:

Alaska S.S. Co. v. Petterson, 347 U.S. 396, 74. S. Ct. 601, 98 L. Ed. 798 (1954).....	13

	Page
Blair v. United States Steel Corporation, 312 F. Supp. 293 (W.D. Pa. 1970), aff'd. 444 F.2d 1390 (3 Cir. 1971).....	16
Chagois v. Lykes Bros. Steamship Company, 432 F.2d 388 (5 Cir. 1970).....	17,18
Dailey v. Carroll, 248 Fed. 466 (2 Cir. 1917).....	8,9,10,11
Gutierrez v. Waterman S.S. Corp., 373 U.S. 206, 83 S. Ct. 1185, 10 L. Ed. 297 (1963).....	13, 17
Hagans v. Ellerman & Bucknall S.S. Co., 318 F.2d 563 (3 Cir. 1963).....	17,18
Hastorf v. F. R. Long, 239 Fed. 852, 152 152 C.C.A. 638 (2 Cir. 1917).....	8
Leary v. United States, 14 Wall 607, 81 U.S. 607, 20 L. Ed. 756 (1872).....	12
Marstaller v. Albina Dock Co., 229 P.2d 269 (Sup. Ct. Ore. 1951).....	11
Seas Shipping Co. v. Sieracki, 328 U.S. 85, 66 S. Ct. 875, 90 L. Ed. 1099 (1946).....	13
The Pennsylvania Railroad Company v. McAllister Brothers, Inc., 137 F. Supp. 788 (2 Cir. 1956).....	14
The Osceola, 189 U.S. 158, 23 S. Ct. 483, 47 L. Ed. 760 (1903).....	13
The Willie, 231 Fed. 865, 152 C.C.A. 61 (2 Cir. 1916).....	8

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 77-7213

JOHN ESPOSITO,

Plaintiff-Appellee,

-against-

UNITED STATES NAVIGATION INC.

-and-

SCINDIA STEAM NAVIGATION CO. LTD.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLEE'S BRIEF

Preliminary statement

Appellee, a longshoreman, recovered a judgment against the appellants for injuries he sustained aboard a barge chartered by United States Navigation, Inc. (Navigation) and used by Scindia Steam Navigation Co. Ltd. (Scindia), the owner of a cargo vessel

the M/S "JALADHANYA", from which bales of hemp were being unloaded to be temporarily stowed on the barge for transport to the M/S "JALAGOPAL", also owned by Scindia, berthed at a nearby pier in Brooklyn (37a, 41a).*

At the conclusion of the liability phase of the non-jury bifurcated trial, Chief Judge Mishler found for the appellee against both defendants and dismissed Scindia's third-party claim for indemnity against appellee's employer, International Terminal Operating Co., Inc.

Statement of facts

Appellee Esposito was a member of a gang of longshoremen in the employ of International Terminal Operating Co., Inc. engaged in loading bales of hemp onto a barge where he was injured when a board of the wooden deck suddenly gave way because of dry rot through which his right leg fell (10a, 17a). The accident occurred at 8:00 P.M. on March 18, 1969.

The barge, designated No. "P-98", on which Esposito was injured, had been chartered by United States Navigation, Inc. (Navigation) from Petterson Lighterage & Towing Corp. (Petterson)

---

*Refers to pages in appendix.

on February 27, 1969, then to be used by Ivaran Lines. (Neither Ivaran Lines nor Petterson were parties to the suit.) Navigation was an agent for both Ivaran Lines and Scindia (37a, 38a).

The charter was the usual oral New York harbor charter as it related to barges without motor power. The "P-98" had to be towed and McAllister had the towage contract (31a).

Navigation exercised sole and exclusive dominion and control over the barge from February 27, 1969, for which it was billed by Petterson Lighterage at the rate of $80.00 per day in addition to other charges as reflected in Petterson's invoice to Navigation dated May 31, 1969 (39a).

The "JALADHANYA" was originally destined for Boston where the bales of hemp were to be discharged. Because of a longshoremen's strike in the Boston harbor, and to avoid the "JALADHANYA" being detained, Navigation sought and obtained permission from the Commissioner of Customs to transfer the hemp stowed aboard the "JALADHANYA" to another Scindia vessel, the M/S "JALAGOPAL"; the former vessel was berthed at Pier #12 and the latter at Pier #9. This transfer was to be accomplished by unloading the hemp from the "JALADHANYA" onto a barge which was to be towed to Pier #9 where the hemp was to be transferred from

the barge to the "JALAGOPAL" (37a, 38a, 41a).

Barge No. P-98 was an enclosed flattop with two doors on either side through which the cargo was landed. An attendant, occasionally and erroneously referred to as "captain" (33a) was assigned to the barge by Petterson Lighterage. He reported to work in the morning, acted as a watchman during the loading operation and concerned himself with securing the lines with the rise and fall of the tides (34a, 35a). The attendant Hubert Reel was not aboard nor were his services required when the barge was towed by a tug from Pier #12 to Pier #9; significantly he "never rode a barge ... . It wasn't required and it still isn't required today" (35a). His was a daytime job (31a). Reel supervised no one except the longshoremen; if they weren't loading properly he would try to encourage them to and if they didn't listen he would go to the dock boss (36a). As to his duties, generally, Reel testified that if, for example, coffee were loaded onto the barge he would verify the count with the checker (29a), make notations on pier papers and deliver it to the ship - for the benefit of the shipping company (33a, 34a).

As to the condition of the barge, Reel testified that his first duty "was to try to keep her afloat. The shell of her was in such bad condition..." (27a). "The deck had little holes

and was covered up with plyboard" (26a).

On the morning of March 18, 1969, when the appellee's longshore gang was assigned to discharge bales of hemp from the "JALADHANYA", the gang was divided into functional work groups, as was customary. Some members of the gang were involved in the removal of cargo from the hold by winch which brought it dockside; other longshoremen then removed the winch's bridle from the cargo and attached the bridle from a crane which was located on the pier; the crane thereupon brought the cargo onto the barge where two other longshoremen removed the crane's bridle and a third, operating a hilo on the barge, stowed the cargo (6a, 7a). Appellee worked on the barge and was one of the two longshoremen who removed the crane's bridles. It was a continuous operation - from ship-to pier - to barge (8a).

The deck of the barge was constructed of wood. Notably, there were many areas where the boards had obviously been replaced by plywood so as to form a patchwork (20a).

At about 8:00 P.M. of the date in question, plaintiff was walking toward a draft that had just landed on the deck of the barge when the deck suddenly gave way under his right foot; his right leg went into the opening up to the groin; he twisted side-

ways and fell, striking his head first against the wall of the barge and a second time on the deck. He suffered a detached retina.

(The medical and damages aspect of appellee's case were tried non-jury by Chief Judge Mishler; it is not the subject of this appeal.)

Argument

1. Appellee sustained his injuries aboard a barge, in navigable waters, when the wooden floor of the deck collapsed.

2. The wood deck was infested with dry rot like a cancer spreading through its underside, evident from the maze of patchwork repairs.

3. The deck of the barge was not reasonably adequate nor safe for its intended use and was therefore unseaworthy as a matter of law.

4. The foregoing premises serving as the predicate for the syllogism,"to whom must one look for the imposition of liability?"

   a) Navigation, as owner pro hac vice of the barge, is responsible for its unseaworthy condition.

   b) Scindia is also responsible for the unseaworthy condition because both the barge and the appellee were in the ship's service at the time of the occurrence. The discharge operation was continuous - from the ship ("JALADHANYA") - to the pier - to the barge - and later, from the barge - to another Scindia ship ("JALAGOPAL").

Appellants' points criticized

1. Fitgerald v. A. L. Burbank & Co. and Guzman v. Pichirilo relate to self-powered navigational vessles manned by a crew of seamen, engineers, mates and a captain - the full complement. There is no parallel between the crew of a cargo vessel and the so-called "captain" of the barge in the case at bar, who never rode a barge (page 5).**

2. The judge in the B. W. King Inc. v. Consolidated Iron & Metal Co. case (page 5) acknowledged the validity of the long line of harbor craft cases with "captains" (which appellants do not repudiate), but then draws a hairline distinction peculiar to its facts. (King, a district court case, was not appealed.)

3. None of the comments or documentation identifying Navigation as agent for "JALADHANYA's" owner were in evidence - neither the record of the American Bureau of Shipping; Lloyd's Register of Ships; Lloyd's List of Shipowners' nor the Manhattan Telephone Directory (page 6). It was error for appellants to make this reference!

   Appellee's cases, cited infra, dispel the relevancy of appellant's Point II (page 6 & 7). Reel was appellants' only witness and no proof was offered by Navigation to support the agency question in the manner it is treated in its brief.

4. To argue that Navigation cannot now recover indemnity from Petterson is not only immaterial but is testimony to appellants' threatened position (page 8).

5. Cannella v. Lykes Bros. S.S. Co. (page 9) does not detract from appellee's contentions; rather it supports them - holding that the owner (of a navigational vessel) is liable over to the charterer as well as to a longshoreman because of an implied warranty of seaworthiness; it also reaffirms the charterers' liability to longshoremen.

**Page number refers to appellants' brief.

> Moreover, contrary to appellants' claim that the defect in Cannella was patent, the court stressed the point that plaintiff did not fall because the ropes of the Jacobs ladder he was climbing broke, or because there were no lower rungs, but because one of the rungs higher up gave way - clearly a latent defect.

POINT I

CHARTERS OF BARGES IN THE NEW YORK HARBOR ALTHOUGH ACCOMPANIED BY AN ATTENDANT PAID BY THE OWNER ARE DEMISES AND THE CHARTERER BECOMES AN OWNER PRO HAC VICE.

The legal relationships among the parties to this action may be discerned from plaintiff's Exhibit #1 in evidence (37a-41a), defendants' reply to plaintiff's Notice to Admit, with accompanying invoices. It serves as a compendium of the relevant facts, which, with the inference to be drawn, supplemented by the testimony adduced at trial, unequivocally establish the predicate for the conclusion that we are addressing ourselves to a demise charter as such is defined in the New York harbor.

It is well-settled law that charters of barges without motive power, although accompanied by a bargee paid by the owner, are demises. The Willie, 231 Fed. 865, 152 C.C.A. 61 (2d Cir. 1916); Hastorf v. Long, etc., Co., 239 Fed 852, 152 C.C.A. 638 2d Cir. 1917); Dailey v. Carroll, 248 Fed. 466 (2d Cir. 1917).

The barge in question was without motor power and it was to be used in and around the New York harbor. Appellants offered no proof to negate the inference that the charter was oral and was typical of the manner and custom by which these barges are utilized. (No proof was offered by appellants of any agreement inconsistent with a demise.)

All of the elements to support the demise by which the charterer becomes owner pro hac vice are present, despite the fact that an attendant was furnished by the owner of the barge.

The rule of law is succinctly expressed in the case of Dailey v. Carroll, supra:

> "There is no doubt that the oral charter of the scow Woods, even though the owner sent with it a 'master' or laborer in his own pay, constituted a demise and made the charterer a bailee. * * * This holding repeatedly announced by this court...has always been in respect of boats with no motive power...and depends ultimately on the fact, commonly known, that the so-called 'captains' of such craft are no more than laborers or deckhands, who cannot reasonably be looked upon as are shipmasters exercising a real command, based on statute, custom, and historic law."

The opinion in the Dailey v. Carroll case, supra, incorporated the further comment:

> "The evidence shows the charterer in absolute control and entitled to direct the navigation and employment of the vessel. These are the indicia by which the nature of the charter party is tested and decision reached as to whether it is a demise or not."

A perusal of the invoices which are a part of Exhibit #1 in evidence (29a, 40a) will demonstrate:

a. Petterson's invoice is directed to "United States Navigation Co., 17 Battery Place, New York, New York 10004" (39a).

b. The invoice reflects the charges for the "Charter of Barge P-98 2/27 to 3/29 31 das. @ $80." (39a).

c. Although the P-98 was for use by Ivaran Lines (39a), Navigation diverted its use to Scindia for 4 days as reflected in Navigation's invoice to Scindia, re: M/S "JALADHANYA" (40a).

d. Petterson's invoice is devoid of any reference to Scindia or the "JALADHANYA".

e. The inevitable conclusion is that Navigation was exercising such dominion and control over the barge that it was empowered to divert the use of the barge to the "JALADHANYA" for the period 3/18 to 3/21.

Briefly stated, Navigation was entitled to direct the navigation and employment of the barge, thereby meeting the test enunciated in the Dailey v. Carroll case, supra.

The Dailey case makes one more significant point:

> " * * * our decisions have, as above indicated, tested on the nature and exigencies of harbor business only." (Emphasis supplied.)

It is this very point (harbor business) that the appellants misconceive, for the cases upon which they rely relate to navigational vessels - self-propelled cargo vessels, e.g. the M/V "CARIB" in the cited Guzman v. Pichirilo case and the SS "ATLAS" in the Fitzgerald v. A. L. Burbank & Co. case. An ocean going self-propelled cargo vessel differs considerably from a barge in that a demise of the former contemplates a complete relinquishment of control - where the charterer mans the ship with his own crew - the captain, the mate and seamen. Appellants erroneously seek to draw the analogy that by Petterson furnishing the laborer (Reel) the character of the demise of a barge in the harbor is thereby destroyed.

The analogy offered by appellants is patently defective because a special rule of law applies to barges which, in the opinion of Dailey, supra, rests on "the nature and exigencies of harbor business only". Moreover, if one were to look to Reel, his duties were trivial and if a hairline distinction were to be drawn, whatever Reel did was for the charterer and/or the benefit of the cargo ship.

The case of Marstaller v. Albina Dock Co., 229 P.2d 269 (Sup. Ct. Ore. 1951) is factually similar to the case at bar in many respects. A longshoreman had been injured while working

aboard a barge; the barge had been delivered by its owner to Albina Dock Co. pursuant to a telephone order; the barge was a flattop vessel without motive power; the responsibility for unloading the barge was that of the shipowner and a stevedoring company; and the invoice was probative as to whether the agreement between the barge owner and the charterer was one of affreightment or a demise. The court relied on many Federal cases in holding:

> "In the instant [redacted] we have an oral charter of this barge. It is generally held that oral charters of barges in local harbors constitute demises. This is particularly true of a barge without motive power. And this rule prevails even though the owner's employees accompany the barge and handle its navigation and movement. * * * The so-called charterer becomes owner pro hac vice."

POINT II

THE DEMISE CHARTERER IS PERSONALLY LIABLE FOR THE UNSEAWORTHINESS OF THE BARGE.

The most significant consequence of a demise is that the demisee is looked upon as the owner pro hac vice of the barge, from which it naturally follows that the demisee stands liable in personam as would the owner and becomes subject to the duties and responsibilities of ownership. Leary v. United States, 14 Wall 607, 81 U.S. 607, 20 L.Ed. 756.

Since the accident occurred on a barge in navigable waters, the substantive Federal Maritime Law is applicable to the issue of liability as is the doctrine of warranty of seaworthiness.

The concept of seaworthiness is based upon an admiralty doctrine of breach of warranty which imposes on the shipowner an absolute duty to maintain a vessel in a seaworthy condition contemplating that things about the ship, whether the hull, the decks, the stowage, the machinery and even the tools furnished must be reasonably fit for the purpose for which they are to be used. Gutierrez v. Waterman S.S. Corp., 373 U.S. 206, 213, 83 S. Ct. 1185, 1190, 10 L. Ed. 297; The Osceola, 189 U.S. 158, 23 S. Ct. 483, 47 L.Ed. 760.

The duty to provide a seaworthy vessel is not only absolute, but non-delegable. Alaska S.S. Co. v. Petterson, 347 U.S. 396, 74 S. Ct. 601, 98 L.Ed. 798, and at the time of the occurrence herein the law was well-settled that the doctrine extended to longshoremen. Seas Shipping Co. v. Sieracki, 328 U.S. 85, 66 S. Ct. 875, 90 L.Ed. 1099 (1946).

The record in the case at bar demonstrates that the board of the deck that gave way when stepped on by appellee was infested with dry rot (8a, 10a); the deck of the barge was a

patchwork consisting of replacement boards of various sizes and dimensions (20a, 43a); Navigation had the barge under its dominion and control for 19 days prior to the occurrence - during which period it was completely out of the possession of Petterson. Therefore, considering the period of time the barge was in Navigation's constrol, the deplorable condition of the barge (shell in such bad condition; two belly pumps required to keep her afloat (27a) and the patchwork deck (43a)), Navigation's liability for the unseaworthy condition is unmistakable. Navigation had dominion over a "monster" and was indifferent that harm might befall one of the longshoremen compelled to work aboard her.

The foregoing conclusion finds further support in the case of The Pennsylvania Railroad Company v. McAllister Brothers, Inc., 137 F. Supp. 788 (1956), factually similar in many respects to the case at bar, in that:

> Ceci, a longshoreman employed by a stevedoring concern was engaged in removing cargo from a barge that was loaded onto a steamship. As the last of the cargo was stowed on the ship, Ceci was instructed to board an adjacent barge preparatory to unloading her cargo. As he stepped from the barge over the rail and onto the deck of the adjacent barge, his foot went through a rotted, water soaked and deteriorated area of the deck and he was injured.

Ceci brought his action in the Supreme Court against Pennsylvania who had chartered the barge from McAllister, the owner. The case was settled by Pennsylvania just before it was submitted to the jury. Pennsylvania thereupon brought the Federal Court action seeking indemnity from McAllister. (Noteworthy is the fact that Pennsylvania was represented by Burlingham, Hupper and Kennedy, the predecessor law firm to appellants' attorneys herein, who made very startling admission, noted below, as to Pennsylvania's liability - contrary to their position in the case at bar although the facts and issues are almost identical.)

Judge Weinfeld took cognizance of the fact that the charter was the usual oral New York harbor barge charter; the hiring was via the telephone, at an agreed daily rate for an indefinite period, terminable at will. McAllister also provided a "captain" and paid his straight time hours of service. Although the ultimate finding by the court was a right of indemnity against McAllister, the case is of interest because of the following findings and conclussions:

a) Pennsylvania conceded its legal duty to Ceci (at p. 791);

b) Pennsylvania admitted that a verdict against it (in the State Court action) for breach of its duty to Ceci "was not only reasonably likely, but almost inevitable";

c) The barge was unseaworthy by reason of the rotted condition of its deck;

d) The condition rendered the area an unsafe place in which to work;

e) Pennsylvania was under a duty to provide Ceci with a **reasonably** safe place to work and was under a non-delegable duty to provide him with a seaworthy vessel (at p. 791).

To put it more succinctly in the words of Judge Weinfeld:

> "While Ceci's complaint was cast in terms of negligence, the evidence also establishes that the vessel was unseaworthy. The condition of the rotted and water soaked area where Ceci fell was such as to leave no doubt of its continued existence over an extended period of time prior to the occurrence and that it was the result of ordinary wear and tear. The condition clearly rendered the area an unsafe place in which to work and resulted in the liability imposed upon the charterer, Pennsylvania. There is no suggestion and certainly no proof that the condition was due to any fault of Pennsylvania." (Emphasis supplied.)

The emphasized words negate appellants' claim that there is no decision which holds a demisee personally liable for an undiscovered latent unseaworthiness existing before the demise (p. 9 of appellants' brief).

Blair v. United States Steel Corporation, 312 F. Supp. 293 (W.D. 1970) affd. 444 F.2d 1390 (3 Cir. 1971) concerned a longshoreman injured aboard a barge and aptly sums up the point:

> "It matters not whether the defendant was the owner, charterer, lessee or bailee of the barge vessel or whether the defendant had a right of possession on an hourly, daily, yearly or monthly basis. Since the barge was in the sole and absolute control of the defendant, liability must exist against said defendant."

It is undisputed that Navigation was empowered to do with the barge whatever it desired, as it did in the case at bar, i.e., charter the barge for Ivaran Lines and divert it to Scindia's use. Petterson's only interest was getting $80.00 per day and reimbursement for the "captain's" overtime, when applicable. For all practical purposes, it was Navigation's barge!

POINT III

THE OWNER (SCINDIA) OF A CARGO VESSEL (M/V "JALADHANYA") IS LIABLE THOUGH THE INJURY TO A LONGSHOREMAN IS SUFFERED ELSEWHERE THAN ABOARD THE SHIP.

It is well-settled that the shipowner is liable though the injury occurs elsewhere than aboard the ship. Gutierrez v. Waterman Steamship Corp., 373 U.S. 206, 83 S. Ct. 1185, 10 L.Ed. 2d 297 (1963).

The test is whether the longshoreman is working in the services of the ship - that is, whether he performed an integral part of the unloading of the cargo vessel. Hagans v. Ellerman & Bucknall S.S. Co., 318 F.2d 563 (3 Cir. 1963); Chagois v. Lykes Bros. Steamship Company, 432 F.2d 388 (5 Cir. 1970).

Chargois v. Lykes Bros. Steamship Co., supra, involved a longshoreman who was injured while he was on the pier adjacent to the ship being loaded. The Court, in applying the warranty of seaworthiness, stated:

> "Chargois was injured while he was holding down the auger; his work - as much as that of the longshoremen stationed on the ship - was an essential part of an unbroken sequence of moving the rice from the pier to the ship."

The case of Hagans v. Ellerman & Bucknall S.S. Co., supra, went beyond the pier and into a warehouse where a longshoreman was injured while unloading bags of sand from a truck. The bags of sand had previously been loaded by fellow longshoremement onto the truck from defendant's ship. The Court reiterated what was then well-settled (at p. 571):

> "The conclusion is inescapable that Hagans performed an integral part of the unloading of the vessel and thus as a matter of law he was in the ship's service."

In the case at bar, a continuous chain of operation was set in motion, unbroken from the instant the bales of hemp were hauled out of the hold of the M/V "JALADHANYA" (owned by Scindia) and onto the pier, there to be taken by crane onto the barge where the bales were stowed, then to be transferred to the M/V "JALAGOPAL"

(also owned by Scindia).

These facts fall squarely within the predicate which imposes liability upon the owner of the cargo vessel in whose service was not only the barge, but Esposito, when injured. It naturally follows that the liability of Scindia for the injuries suffered by appellee is indisputable - and absolute.

Implicit in Chief Judge Mishler's opinion are the inferences to be drawn from the facts, namely: the barge was unseaworthy; a duty was owed to longshoremen to provide them with a reasonably safe place to work; appellee was injured because of the unseaworthiness of the barge; Navigation chartered the barge; the barge was utilized by Scindia; therefore Scindia is liable for the unseaworthy condition of the barge. A chain of events were set in motion - the contamination of the barge affected everyone who touched it - from Petterson - to Navigation - to Scindia.

CONCLUSION

For the foregoing reasons, abundantly supported by the cited cases, the judgment in favor of plaintiff-appellee should be affirmed in all respects.

Respectfully submitted,

FODERA, DORFMAN & FERRARI
Attorneys for Appellee

JACK H. DORFMAN
of counsel

COURT OF APPEALS
SECOND CIRCUIT

JOHN ESPOSITO,
Plaintiff-Appellee,

- against -

UNITED STATES NAVIGATION INC.,
AND
SCINDIA STEAM NAVIGATION GO., LTD.,
Defendants-Appellants.

Index No. ——

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF *ss.:*

I, James A. Steele *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 112 West 136th Street; New York, New York

That on the 26th *day of* August, 7*19* 77 *at* 1 Batter Park Plaza New York, N.Y.

deponent served the annexed Appellee Brief *upon* Burlingham Underwood & Lord, Esqs

the *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

Sworn to before me, this 26th *day of* August *19* 77

James A. Steele

ROBERT T. [illegible]
NOTARY PUBLIC, State of New York
No. 31 [illegible]
Qualified in New York County
Commission Expires March 30, 1979